

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 29/ 2018

Dated : 28th November 2018

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	Sri. Patrick Bernardinz D'Sa, # 17-7-477 "Pauline", Miller Road, Valencia, Kadak, Mangalore - 575 002, Karnataka.
2.	GSTIN or User ID	Unregistered (Temp. ID : 291800000227ARM)
3.	Date of filing of Form GST ARA-01	26-02-2018
4.	Represented by	Sri. Patrick Bernardinz D'Sa
5.	Jurisdictional Authority - Centre	--NA--
6.	Jurisdictional Authority - State	--NA--
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000-00 and SGST : Rs.5,000-00 CIN: SBIN518052696927 dated 21.02.2018.

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 & UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

Sri. Patrick Bernardinz D'Sa, # 17-7-477 "Pauline", Miller Road, Valencia, Kadak, Mangalore - 575 002, Karnataka (herein after referred to as Applicant) having temporary GSTIN number 291800000227ARM, has filed an application, on 23.02.2018, for advance ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant, a land owner, entered into an agreement with M/s Nforce Infrastructure India Pvt. Ltd., Builders & Developers, 'Victoria', Door No.25-14-

840/1, Near Valencia Church, Kankanady Post, Mangaluru – 572 002, for joint development and promotion of the “N Force – Pauline”, the residential / commercial building at Valencia, Mangalore. The builder offered to develop and promote a multistoried residential apartment cum commercial building in the property belonging to the Applicant as well as the other land owners. Therefore the applicant filed this instant application seeking advance ruling on the following issue :

“Whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members ?”

PERSONAL HEARING: / PROCEEDINGS HELD ON 07.03.2018.

3. The Applicant Sri. P. B. D'Sa attended the personal hearing before the authorities and stated / narrated the events that the applicant had entered into an agreement with a Developer to develop his land. He had contributed only his land and in return gets his share of 50% of the total 12 flats constructed and also 50% share out of 4000 sq. ft. of commercial construction. The Joint Development Agreement was signed by him in January 2016 and construction is reported to be completed in January 2018 and hence filed the instant application.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri P B D'Sa during the personal hearing. We also considered the issue involved on which advance ruling is sought by the applicant, relevant facts of the issue involved and the contents of the Joint Development Agreement.

6. The Applicant, filed this application dated 23.02.2018 for advance ruling, seeking clarification as to ***“Whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members ?”***

7. Chapter XVII of the CGST Act'2017 deals with the provision of 'Advance Ruling' and Section 94(a) of the CGST Act 2017 defines 'Advance Ruling' as a decision provided by the Advance Ruling Authority, to an applicant on matters or questions specified in Section 97(2) of the CGST Act 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

8. The applicant registered himself with GSTN for the purpose of filing application before the Authority for Advance Ruling. We find that the applicant is liable to be registered, as discussed in the succeeding paragraphs. Accordingly, the application was admitted.

9. The applicant entered into an agreement with M/s Nforce Infrastructure India Private Limited, Mangalore to develop his land out of which, for his contribution of land, he gets a share of 50% of the total 12 flats constructed and also 50% share out of 4000 sq. ft. of commercial construction. The Joint Development Agreement was signed by him in January 2016 and the construction is stated to be completed in January 2018.

10. In the context of the question raised by the applicant, it is pertinent to examine and discuss Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, which notifies the following classes of registered persons, namely :-

- a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter)

11. This notification notifies a person or persons who supply development rights to a developer / builder etc., against a consideration, which may be in the form of construction service, is liable to be registered under CGST/KGST Act 2017. It also provides that the person who supplies the development rights shall pay central tax at the time when the developer / builder transfers possession or right in the building by way of conveyance deed or similar instrument.

Therefore the applicant, being the person who has supplied development rights to a developer in respect of his land, is liable to registration and payment of tax.

12. Section 2(94) of CGST Act' 2017 defines "Registered Person" as a person who is registered under Section 25 but does not include a person having a Unique Identity Number.

Section 25 of the CGST Act' 2017 prescribes the procedure for registration and stipulates that "Every person who is liable to be registered under Section 22 or Section 24 of the CGST Act 2017 shall apply for registration in every such state or Union territory in which he is so liable within thirty days from the date on which he comes liable to registration, in such manner and subject to such conditions as may be prescribed;"

Section 22 of the CGST Act 2017 tells about the persons liable for registration and stipulates that Every supplier, who makes a taxable supply of goods or services or both, shall be liable to be registered, if his aggregate turnover crosses the threshold limit prescribed in the Act.

The applicant has not furnished any information with regard to transfer of possession of the constructed flats / commercial area or allotment order of the same, in the instant application and hence the authority presumes that the possession of the constructed flats / commercial area has not been handed over to the Applicant, as on date.

13. The Developer M/s Nforce Infrastructure India Private Limited, with whom the applicant entered into an agreement for development of his land, has also filed an application seeking advance ruling on certain questions based on the same Joint Development Agreement. Therefore the ruling in the developer's case may also be interest to this applicant.

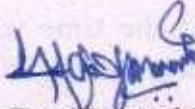
14. Therefore, we are of the considered opinion that the Applicant is a supplier of a taxable service by way of transfer of undivided share of land and hence is liable to register himself and discharge the tax accordingly.

15. In view of the foregoing, we pass the following

RULING

The applicant's question "**Whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members ?**" is answered as '**YES**'


28.11.2018
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 28.11.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Mangalore Commissionerate, Mangalore

The Asst. Commissioner, LVO- , Mangalore

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